

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICANS FOR BENEFICIARY CHOICE,
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Civil Action No. 4:24-CV-439-O

* * * * *

COUNCIL FOR MEDICARE CHOICE,
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Civil Action No. 4:24-CV-446-O

NOTICE OF PROPOSED BRIEFING SCHEDULE

These two cases involve challenges to a Final Rule issued by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, relating to the Medicare Advantage and Part D programs. In case 4:24-CV-439-O, the Court directed the parties to file a joint notice setting forth an agreed briefing schedule on a motion for a Section 705 stay or, alternatively, preliminary injunction, that the plaintiffs in that case (the “ABC plaintiffs”) were planning to file. That stay/PI motion has since been filed by the ABC plaintiffs on June 17, 2024. Meanwhile, case 4:24-CV-446-O was reassigned to this Court from Judge Pittman given the similarity of issues raised by the plaintiffs in that case (the “CMC plaintiffs”), who are also

planning to soon file their own motion for a preliminary injunction and Section 705 stay. In the interest of efficiency and judicial economy, the parties believe it makes sense to have both cases proceed in a coordinated fashion (whether or not the Court desires to formally consolidate the cases). To that end all the parties have conferred and submit the following proposed briefing schedule for both the ABC plaintiffs' motion as well as the CMC plaintiffs' forthcoming motion:

- | | |
|---------------------|--|
| May 21, 2024 | Anticipated date of filing of CMC plaintiffs' motion |
| June 3, 2024 | The government responds to the ABC plaintiffs' motion and the CMC plaintiffs' motion, via a single consolidated response not to exceed 50 pages, filed by 1 p.m. Central |
| June 7, 2024 | The ABC plaintiffs and the CMC plaintiffs file their respective reply briefs, each not to exceed 15 pages |

The parties have also conferred about a possible hearing on the motions, and they are in agreement that the motions can be decided without live testimony. Plaintiffs also respectfully submit that a hearing or oral argument is warranted, and respectfully request that the Court schedule it no later than June 19, 2024, due to counsel's scheduling conflicts after that date.

Respectfully submitted,

/s/ Michael P. Lynn

Michael P. Lynn
Texas Bar No. 12738500
Lynn Pinker Hurst & Schwegmann, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Phone: (214) 981-3801
Fax: (214) 981-3839
mlynn@lynnllp.com

David Keltner
Texas Bar No. 11249500
Kelly Hart & Hallman LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Phone: (817) 878-3560
Fax: (512) 495-6401
david.keltner@kellyhart.com

Michael B. Kimberly*
D.C. Bar No. 991549
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, D.C. 20001
Phone: (202) 756-8901
Fax: (202) 756-8087
mkimberly@mwe.com

* *pro hac vice* motion pending

Attorneys for the ABC Plaintiffs
(Case 4:24-CV-439-O)

/s/ Eugene Scalia

Eugene Scalia (*pro hac vice*)
Matthew S. Rozen (*pro hac vice*)
Aaron M. Smith (*pro hac vice*)
M. Christian Talley (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
escalia@gibsondunn.com
mrozen@gibsondunn.com
asmith3@gibsondunn.com
ctalley@gibsondunn.com

Allyson N. Ho
Texas Bar No. 24033667
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201
Telephone: (214) 698-3100
Facsimile: (214) 571-2971
aho@gibsondunn.com

Charles W. Fillmore
Texas Bar No. 00785861
H. Dustin Fillmore III
Texas Bar No. 06996010
THE FILLMORE LAW FIRM LLP
201 Main Street, Suite 700
Fort Worth, TX 76102
Telephone: (817) 332-2351
chad@fillmorefirm.com

Attorneys for the CMC Plaintiffs
(Case 4:24-CV-446-O)

* * * * *

LEIGHA SIMONTON
UNITED STATES ATTORNEY

/s/ Brian W. Stoltz

Brian W. Stoltz

Assistant United States Attorney

Texas Bar No. 24060668

1100 Commerce Street, Third Floor

Dallas, Texas 75242-1699

Telephone: 214-659-8626

Facsimile: 214-659-8807

brian.stoltz@usdoj.gov

Attorneys for Defendants (Case 4:24-CV-439-
O and 4:24-CV-446-O)

Certificate of Service

On May 21, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz
Brian W. Stoltz
Assistant United States Attorney